

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE CHIEF PROCUREMENT OFFICER

In the Matter of Protest of:)

DECISION

Heritage Community Services, Inc.)

CASE No. 2010-149

Materials Management Office)

POSTING DATE: February 10, 2011

RFP No. 5400002251)

Teen Pregnancy Services - Abstinence)

MAILING DATE: February 10, 2011

Department of Social Services)

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Heritage Community Services, Inc. (Heritage). With this request for proposals (RFP), the Materials Management Office (MMO), on behalf of the Department of Social Services (DSS), seeks a vendor to provide a teen pregnancy prevention program that uses a National Abstinence Clearinghouse (NAC) approved curricula. Heritage protested MMO's intent to award to South Carolina Parents Involved in Education (SCPIE) alleging "SCPIE's bid was nonresponsive and fails to conform to the essential requirements of the RFP."

In order to resolve the matter, the CPO conducted a hearing on January 28, 2011. Appearing before the CPO were Heritage, represented by Karl S. (Butch) Bowers, Jr. and M. Todd Carroll, Esquires; SCPIE, represented by Michael H. Montgomery, Esquire; DSS, represented by Kathy Gettys, Esquire; and MMO, represented by John Stevens, CPPB, State Procurement Officer.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On September 14, 2010, MMO issued the RFP. [Ex. 1]
2. On September 21, 2010, MMO closed the question period and issued Amendment #1. [Ex. 2]
3. On September 24, 2010, MMO issued Amendment #2. [Ex. 3]
4. On October 5, 2010, MMO opened the proposals received.
5. On December 2, 2010, after evaluation and scoring of the proposals, MMO posted a notice of intent to award to SCPIE. [Ex. 11] The composite scores awarded the offerors' proposals by the evaluators were:

<u>Offeror</u>	<u>Total Score</u>
SCPIE	428
Heritage [Ex. 9]	413

5. On December 13, 2010, the CPO received Heritage's protest.¹

CONCLUSIONS OF LAW

Heritage's protest alleges that SCPIE's bid [proposal] was non-responsive because it failed to meet several mandatory material or essential requirements of the RFP, which are detailed below. As a general rule, a responsive offeror is one who submits an offer which conforms in all material aspects to the RFP. S.C. Code Ann. § 11-35-1410(7). The protestant has the burden to prove by a preponderance of the evidence the issues that it alleges. See generally, Protest of DP Consultants, Inc. and Horizon Software Systems, Inc., Panel Case No. 1998-6.

¹ Because the tenth day for a protest of the intent to award fell on a Sunday, the protest deadline was Monday, December 13, 2010, and Heritage's protest letter was timely.

1. First, Heritage contends that SCPIE’s proposal was non-responsive because it contained more “reference letters” than the RFP’s instructions allowed. Specifically, Heritage challenges the inclusion of commitment letters from DHEC.

At the hearing, SCPIE and DSS moved to dismiss this allegation. That motion was denied.

Never-the-less, the CPO finds that this issue is without merit. The RFP and an amendment did limit the number of references to five. [Ex. 1, p. 15; Ex. 3, p. 3]. SCPIE’s proposal included five references. [Ex. 13, pp. 19, 22-26.] Heritage attempts to characterize the inclusion of commitment letters from the Department of Health and Environmental Control’s (DHEC) county offices, SCPIE’s subcontractor on the project, in the Appendix as additional reference letters, which violate the RFP’s requirements. However, SCPIE’s proposal clearly differentiates that these additional letters from DHEC are commitment letters from their subcontractor rather than reference letters. [Ex. 13, pp. 21, 35] Moreover, the letters merely acknowledge that DHEC agrees to be a subcontractor and, with the exception of the commitment letter from DHEC’s Office of Minority Health explaining their participation, the commitment letters from DHEC health directors are all identical. [Ex. 13, pp. 27-34, 37]

As stated previously, Heritage has the burden of proving its allegation by a preponderance of the evidence. Here Heritage failed to prove that SCPIE’s proposal contained additional reference letters. Accordingly, the allegation that SCPIE was non-responsive in this regard is denied.²

2. Second, Heritage alleges that SCPIE’s proposal was non-responsive because it did not comply with the format requirements of the RFP. Specifically, Heritage claimed SCPIE was

² Although Heritage contended in its protest letter that the commitment letters caused PIE to have an unfair advantage in the evaluation, the CPO notes that Heritage failed to present any evidence of this at the hearing. Heritage did not call any of the evaluators to testify regarding this or any other allegation in its protest letter.

non-responsive because, in some instances, it used the wrong font and font size, failed to double-space its proposal throughout, and placed information in the wrong order.

At the hearing, SCPIE and DSS moved to dismiss this allegation. That motion was denied.

The CPO also finds that this issue is without merit. Heritage alleges that SCPIE, in some places, used the wrong font and font size, failed to double-space its proposal throughout, and placed information in the wrong order in violation of the RFP's requirements. Heritage points to the "must" language in the RFP for its proposition that these were mandatory requirements.

The RFP specifies that "[p]roposals must be prepared using double-spaced, 12-point Times New Roman Font..." and "[i]nformation must be provided in the order in which it is requested." [Ex. 1, p. 15] The CPO has reviewed SCPIE's proposal for these alleged improprieties. While it appears that SCPIE utilized the proper font and font size in the vast majority of its proposal, the headers and some of the page entitled "Subcontractor Identification and Qualifications" do appear to be a different font. Moreover, SCPIE's proposal is largely double-spaced, with the exception of a portion of the page entitled "References Attesting the Efficiency of SCPIE's NAC Program" and the charts.

According to the South Carolina Consolidated Procurement Code (Code), "a minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements...having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract." S.C. Code Ann. § 11-35-1520(13).³ Where an offer contains minor irregularities, the procurement officer shall either give the bidder an opportunity to cure any deficiency or waive any such deficiency. *Id.*

Despite Heritage's contention, the South Carolina Procurement Review Panel (Panel) has clearly held that a requirement is not "essential" or "material" simply because it is mandatory according to the RFP. Protest of National Computer Systems, Inc., Panel Case No. 1989-3; See also, Protest by

American Sterilizer Company, Panel Case No. 1983-2. Moreover, the CPO concludes that the deviations from the font, spacing and order requirements were minor informalities or irregularities; they had no effect on the price, quality, quantity or delivery of the supplies or performance of the services being procured, and there is no evidence that it prejudiced other offerors. Accordingly, Heritage failed to prove that SCPIE's proposal was non-responsive in this regard, and this allegation is denied.

3. Heritage also contends SCPIE's use of a cover page and a cover letter constituted improper communications with the evaluators because it was not requested and thus should have not been included or instead should have been placed in Appendix.

At the hearing, SCPIE and DSS moved to dismiss this allegation. That motion was denied.

Heritage alleges that SCPIE's proposal was also non-responsive because it included a cover page with graphics and a cover letter from its President, Sheri Few, which were improper. However, Heritage failed to show what requirement of the RFP the inclusion of these items violated; neither the RFP nor its amendments state that proposals cannot contain a cover page or a cover letter, despite Heritage's contention. [See Ex. 13.] Therefore, this allegation is without merit.

Even if the RFP could be read with these restrictions, the CPO finds that the inclusion of a cover page with graphics and a cover letter from the president "selling" its services would be expected in a proposal to the State and was not improper. In support of its argument that these items constituted improper communications with evaluators and were prohibited, Heritage referenced the following provision in the RFP:

RESTRICTIONS APPLICABLE TO OFFERORS

³ Regulation 19-445.2095(E) makes this Section applicable to RFPs as well.

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, *you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials*. All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, *you agree not to give anything to any Using governmental Unit or its employees, agents or officials prior to award*. (Ex. 1, p. 8)

However, this restriction prohibits *ex parte* communications with the governmental unit and its officials and agents, in this case DSS, except through the Procurement Officer. SCPIE did not violate this restriction since SCPIE submitted the “cover sheet” through Chris Manos, the Procurement Officer, not to officials or agents of DSS outside formal procurement channels. Therefore, a violation of this provision simply did not occur.

Accordingly, Heritage also failed to prove that SCPIE’s proposal was non-responsive in this regard, and this issue is denied.

4. Finally, Heritage alleges that SCPIE’s proposal is actually a joint bid with DHEC and should not be permitted.

At the hearing, SCPIE and DSS moved to dismiss portions of this allegation. That motion was held in abeyance.

In its protest letter dated December 13, 2010, Heritage alleged that SCPIE’s proposal was non-responsive because it was actually a joint bid with DHEC, which violated a provision of the RFP, which reads in part “[a]n offeror may be submitted by only one legal entity; ‘joint bids’ are not allowed.” [See Ex. 1, p. 5] Moreover, it also contends that by submitting a joint bid SCPIE violated the legislative intent of the authorizing Proviso 26.22, which requires that this particular contract be awarded to one entity. [See Ex. 1, p. 30] In support of its argument, Heritage points to places in

SCPIE's proposal that reference a "partnership" with DHEC. However, the CPO finds that Heritage failed to prove by a preponderance of the evidence that the proposal was a joint bid. SCPIE's proposal identified only SCPIE as the offeror, and it was signed by SCPIE's Chairman. [Ex. 13, p. 1] Accordingly, SCPIE is solely responsible for performance of the contract. Moreover, SCPIE's proposal clearly reflects that DHEC will be a subcontractor on the project. [Ex. 13, p. 35]. At the hearing, Ms. Few also verified that DHEC would be a subcontractor. Since there was no evidence that the award was made to more than one entity, consequently there was no violation of the RFP or the plain meaning of the proviso. Therefore, Heritage failed to prove that SCPIE was non-responsive in this regard, and the issue is denied.

To the extent that Heritage alternatively claims that SCPIE's proposal was a joint venture, rather than a joint bid, the CPO finds that this allegation is also without merit.⁴ There is no prohibition on joint ventures. Regardless, Heritage failed to prove by a preponderance of the evidence that a joint venture even existed. In fact, the only relevant evidence before the CPO - SCPIE's proposal and the testimony of Ms. Few that SCPIE has no joint venture agreement with DHEC - indicates there was no joint venture.

Further, Heritage also mentions that DHEC has no experience in abstinence education in its protest letter. To the extent that Heritage includes an allegation that DHEC does not have the required NAC certification, there is no requirement that any subcontractors also must have this certification. SCPIE's proposal contains adequate information that SCPIE possesses the required NAC certification, and Heritage has neither proven nor alleged that SCPIE is not properly certified. [Ex. 13, pp. 13-14] Therefore, this additional allegation is without merit.

⁴ The gravamen of this allegation in Heritage's protest letter is that SCPIE's proposal was actually a joint bid; however, Heritage refers to DHEC's involvement as a "joint venturer" once in the letter.

During the hearing, SCPIE and DSS moved to dismiss as untimely Heritage's contention that allowing SCPIE to "funnel" the proceeds to DHEC without a re-appropriation constituted a violation of the separation of powers doctrine. Their motion was based on the fact that Heritage first alleged this in its December 22, 2010 response to SCPIE's motion to dismiss, which was beyond the deadline to amend its protest. (See December 22, 2010 letter by Heritage.) The Code requires that a protest must set forth the grounds of the protest with "enough particularity to give notice of the issues to be decided." Section 11-35-4210(2)(b). The CPO agrees that Heritage's protest letter, even loosely read, does not put the parties on notice that Heritage intends to allege a separation of powers violation. Pursuant to Section 11-35-4210(2)(b), any amendment to the protest letter was due by no later than December 17, 2010. Therefore, this allegation is dismissed for failure to alert or give notice of this issue within the protest period.

DETERMINATION

For the aforementioned reasons, the protest is denied.⁵



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

2/10/2011

Date

Columbia, S.C.

⁵ Due to a desire to moderate the effort required to evaluate the proposals received by a blue ribbon panel of volunteer appointees, the RFP in this procurement included entirely too many meaningless format restrictions. The CPO merely cautions agencies against the use of superfluous and unnecessary format restrictions that can needlessly restrict competition, which is not in the spirit of the purposes and policies of Section 11-35-20 of the Code.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised October 2010)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



HALL & BOWERS, LLC
ATTORNEYS AT LAW

1329 Blanding Street | Columbia, SC 29201
P.O. Box 12107 | Columbia, SC 29211

803.454.6504 tel
803.454.6509 fax
hallbowers.com

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KEVIN A HALL
kevin.hall@hallbowers.com
KARL S. (BUTCH) BOWERS JR
butch.bowers@hallbowers.com
M. TODD CARROLL
todd.carroll@hallbowers.com

Via Hand Delivery and E-Mail

December 13, 2010

R. Voight Shealy
Chief Procurement Officer for Goods and Services
Materials Management Office
1201 Main St., Suite 600
Columbia SC 29201

RE: Protest of Notice of Intent to Award Teen Pregnancy Services - Abstinence
Contract No. 4400003133
Solicitation No. 5400002251
Our File No. 11303/01500

Dear Mr. Shealy:

On behalf of our client Heritage Community Services, Inc. and pursuant to S.C. Code §11-35-4210, we hereby protest the Notice of Intent to Award the above-referenced contract to SC Parents Involved in Education (hereinafter "SCPIE"). The grounds for this protest are as follows:

Pursuant to the Instructions to Offerors contained in the Request for Proposal, "[a]ny Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive," and "Offerors will not be given an opportunity to correct any material nonconformity (Instructions to Offerors, p. 8)." As more fully shown below, these Instructions include several mandatory, material requirements with which SCPIE's proposal did not comply. As a result, SCPIE's bid was nonresponsive and fails to conform to the essential requirements of the RFP, and therefore SCPIE's proposal must be rejected pursuant to the applicable Instructions, S.C. Code §11-35-1410(7), and R. 19-445-2070(A).

SCPIE's proposal failed to conform to the essential requirements of the RFP in the following material ways:

1. The SCPIE proposal contains more reference letters than the RFP Instructions allow.

The Instructions for this RFP call for references attesting to the effectiveness of the Offeror's NAC (National Abstinence Clearinghouse) program. On page 15 of the Instructions¹, it states in clear and unambiguous terms that the References portion of

¹ Amendment No. 2 to the RFP also mandates that "[r]eferences are limited to no more than five (p. 3)."

the proposal “*must* be limited to no more than five references (emphasis added).” Despite this clear mandate to limit the number of reference letters in support of its proposal to five, SCPIE instead submitted thirteen (13) letters in support of its bid. In an apparent effort to conceal this blatant attempt to circumvent this material limitation in the Instructions, SCPIE characterizes eight of the thirteen reference letters as “commitment” letters from various DHEC regional health directors. Each of these eight letters expresses full support for SCPIE’s effectiveness, thus revealing their true nature as reference letters, notwithstanding SCPIE’s attempt to cloak them otherwise.

On the contrary, Heritage Community Services strictly complied with this requirement and only submitted five letters of reference, even though it could have easily submitted many more. As part of its proposals in years past, Heritage has submitted many more letters of commitment and support from schools and agencies that have been the beneficiaries of Heritage’s services. However, no such additional letters were submitted with its proposal in response to this RFP because the Instructions clearly placed a limit of five on such references.

By failing to conform to this material requirement of the RFP, SCPIE achieved the benefit of an unfair competitive advantage over Heritage, which chose to comply with all of the essential requirements of the RFP. SCPIE’s failure to conform to the requirement that only five letters of reference be submitted clearly had a material impact on the outcome of the bid evaluation, as Evaluator #5 gave SCPIE a score that was 42% greater than that given to Heritage for the “References attesting effective” category (Ex. A). As a result, SCPIE’s proposal should be deemed nonresponsive and should be rejected, and the contract should instead be awarded to Heritage.

2. The SCPIE proposal does not comply with the format requirements of the RFP.

Under the heading of “General Proposal Format Requirements” on page 15 of the Instructions for this RFP, it states in clear and unambiguous terms that “[p]roposals must be prepared using double-spaced, 12-point Times New Roman Font, with one (1)-inch margins on all sides.” It is clear that such restrictions and requirements must be strictly observed in order to ensure a fair competitive process where procurement decisions are influenced by the substance, rather than the appearance, of proposal packages.

Only two pages of the SCPIE proposal (p. 14 and 18) comply with the format requirements of the RFP, reflecting a clear violation of this basic, yet material, element of the Instructions. The SCPIE proposal is replete with flagrant violations that reflect a conscious disregard for the format requirements, to wit:

- Page 3 is not in 12-point Font. (Ex. B)
- Page 4 is an eye-catching, graphically designed “cover page” that uses graphics and varying points and Font styles. (Ex. C)
- Pages 5, 6, 7, 15, 16, 17, 19, and 20 are not completely in 12-point type or in

Times New Roman Font as required. (Ex. D; see Titles, Charts and Content)

- Pages 3, 9, 10, and 15 are not completely double-spaced. (Ex. E)
- Page 15 clearly violates the format requirements, using one page for what would have taken several to communicate if SCPIE had complied with this instruction.
- Pages 8, 11, 12, 13, and 15 are not completely in Times New Roman Font. (Ex. F; see Titles and Content).

Such irregularities and nonconformities provided SCPIE with more space to provide information to the Review Committee and more opportunity to catch the attention of the Committee, all of which is unfairly prejudicial to Heritage. Heritage typically provides an extensive and persuasive logic model in its grant applications, but because of its conformity to the strict format requirements and its desire to avoid having its proposal deemed nonresponsive for failing to comply with the applicable instructions, Heritage removed its logic model from its bid.

Once again, Heritage strictly complied with this instruction and adhered to the proposal format requirements. On the other hand, SCPIE chose a different route and failed to conform to yet another essential requirement of the RFP, thus putting Heritage at a competitive disadvantage. Accordingly, SCPIE's proposal is nonresponsive and should be rejected.

3. SCPIE's letter to the Review Committee constitutes an improper communication in violation of the RFP Instructions.

Under the heading of "Restrictions Applicable to Offerors" on page 8 of the Instructions for this RFP, in paragraph (d) it states that after issuance of the solicitation, "***you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials*** (bold and italicized text contained in original document)." The clear intent of this instruction is to prohibit attempts by offerors to exert undue influence over the decision-making process regarding the RFP.

Despite the instruction to prohibit communication regarding this procurement activity with the Using Governmental Unit or its agents, the President of SCPIE, Ms. Few, included an impassioned, heartfelt personal letter directed to the Review Committee in her application package. In her plea to the Committee, Ms. Few says it "is our prayer that SCPIE will find favor with you," and she says it "is the desire of our heart to provide abstinence training to South Carolina adults in South Carolina communities where there is the greatest need (Ex. G)."

This is precisely the type of heartstrings-based communication that this restriction is designed to prevent. While the Review Committee members are not employees of the Department of Social Services, the Using Government Unit in this instance, they are certainly agents of DSS for purposes of making this procurement decision on behalf

of that agency. Therefore, Ms. Few's contact with the Review Committee through this written communication violates both the spirit and intent of this restriction, and as a result SCPIE's offer should be disqualified and rejected.

4. The SCPIE proposal includes comment over and above the specific information requested, but it was not included in the Appendix as required.

Under the heading of "Contents of Offer" on page 12 of the Instructions for this RFP, in paragraph (d) it states in clear and unambiguous terms that any comment over and above the specific information requested in the solicitation is to be included as a separate appendix to the offer. Despite this clear prohibition against the inclusion of extraneous information in the main body of the proposal, SCPIE yet again ignored the Instructions in an effort to create an unfair competitive advantage. Specifically, SCPIE included a persuasive personal letter from its President to the Review Committee as the very first page of its proposal after the initial 2 page RFP form (see Ex. G), and then the very next page is a graphically designed cover page intended to catch the reader's eye and attention (see Ex. C).

Heritage went to great lengths to ensure that no information that could render its proposal nonresponsive was included in its bid. Heritage is a passionate organization and found it difficult to refrain from discussing the important consequences regarding the issue of teen pregnancy and effective abstinence education in South Carolina. However, large portions of text were removed from its proposal in order to comply with the strict requirements found in the Instructions for this RFP, and SCPIE should be held to the same standard.

If SCPIE was even allowed to include these materials in its bid, which is disputed, it was required to place them in the Appendix of its proposal in accordance with the RFP Instructions, rather than in the very front of the main body of its proposal. Despite this clear requirement², which obviously would have limited the impact of the documents, SCPIE chose instead to defy the Instructions so that the materials would have maximum impact on the Review Committee. Their efforts were apparently rewarded, as Reviewer # 1 commented that she "loved the presentation" by SCPIE. Because SCPIE failed to conform to yet another essential requirement of the RFP, its proposal is therefore nonresponsive and should be rejected.

5. The SCPIE proposal is actually a joint bid with DHEC and should therefore be disallowed.

Under the heading of "Bid/Proposal as Offer to Contract" on page 5 of the Instructions for this RFP, it states that [a]n Offer may be submitted by only one legal entity; 'joint bids' are not allowed." This is consistent with the legislative intent

² In addition, by inserting these materials in the midst of required information, SCPIE also violated the format requirement that "[i]nformation must be provided in the order in which it is requested (Instructions, p. 15)."

reflected in authorizing Proviso 26.22, whereby the General Assembly directed that the contract for abstinence education be awarded to only one agency. While SCPIE's proposal is self-described as a sole-agency bid, it is sole-agency in name only, as it has all the relevant features and characteristics of a joint bid.

For example, pages 4 and 35-37 of SCPIE's proposal clearly reflect that its bid is a joint proposal with DHEC. Page 4 references SCPIE's "partnership" with DHEC, page 35 reflects that DHEC will receive almost half of the contract amount from SCPIE for its share of the "partnership" (\$250,000 of \$540,000), and pages 36-37 contain a letter from DHEC's Director of Office of Minority Health that refers to DHEC as a "partner" with SCPIE in this application no less than three times (Ex. H). Furthermore, a close look at SCPIE's proposal reveals that it would be impossible for SCPIE to provide the services for this contract but for DHEC's involvement as a joint venturer in this proposal, and simply referring to DHEC as a "subcontractor" even though it is in every respect a joint applicant does not cure this fatal defect.

The joint nature of SCPIE's bid was clearly recognized by the Review Committee. For example, Reviewer # 2 stated, "Utilization of the Office of Minority Health a strong plus;" Reviewer # 3 noted, "Affiliated with SC DHEC;" and Reviewer # 5 stated, "Government (DHEC) partnership is commendable."

By jointly applying for the funds with DHEC, which has no experience or expertise in abstinence education, SCPIE has violated not only the clear Instructions of this RFP, but also the legislative intent as reflected in the authorizing Proviso. SCPIE's proposal should accordingly be declared nonresponsive and must be rejected.

As indicated above, the RFP contains specific instructions and requirements to which all offers must conform. Failure to conform to these essential requirements mandates that the bid shall be rejected. *See* R. 19-445.2070(A). The reason that the above-referenced requirements are material and essential is clear: they are designed to ensure that all proposals have substantially the same appearance so that procurement decisions are based solely on the substantive content of the bids rather than any subjective criteria that may arise if offerors are allowed to (a) ignore the instructions regarding the limit on the number of reference letters; (b) ignore the format requirements for proposals; (c) ignore the prohibition on attempting to exert undue influence on the procurement process; and (d) ignore the structural requirements for proposals. Moreover, offerors should not be allowed to make joint bids disguised as sole contractor bids if the RFP prohibits joint bids, as this one does. Any one of these failures to conform to the requirements contained in the RFP Instructions should render SCPIE's proposal nonresponsive; taken as a whole, it is clear that SCPIE's conduct requires a determination that SCPIE's proposal is nonresponsive and that it be rejected.

For all of these reasons, Heritage Services, Inc. respectfully requests that SCPIE's proposal be deemed nonresponsive and rejected, and that a Notice of Intent to Award this Contract be issued to Heritage. Please contact me if you have any questions regarding the basis of this protest. Thank you for your consideration of this protest.

Yours very truly,

Butch Bowers

Karl S. Bowers, Jr.

Encl.

EXHIBIT A

COMPOSITE SCORING

TEEN PREGNANCY SERVICES - ABSTINENCE

RFP No. 5400002251

Evaluator # 1 Evaluator # 2 Evaluator # 3 Evaluator # 4 Evaluator # 5

POINTS ALLOWED	POINTS SCORED	TOTAL POINTS				
	30	25	20	20	28	
1. Program Description	30	20	20	20	26	
2. Experience/Qualifications	20	20	15	20	12	
3. References attesting effective	20	20	15	20	18	
4. Number of Counties Served						<u>HERITAGE</u>
Total	100	85	70	80	84	<u>413</u>

OFFEROR: SC PIE

1. Program Description	28	24	25	25	27	
2. Experience/Qualifications	30	20	25	20	25	
3. References attesting effective	20	20	15	20	17	
4. Number of Counties Served	20	20	15	18	19	
Total	100	84	80	83	88	<u>SC PIE</u> <u>428</u>

Ch: M
11/30/2010

EXHIBIT B



PO Box 619
998 Guion Drive
Lynch, SC 29078
c: 803 436 8144
e: 803 439 1957
www.scpie.org

October 4, 2010

Review Committee
SC Department of Social Services
Teen Pregnancy Prevention Program - Abstinence

Dear Reviewer:

Thank you for the opportunity to present this proposal. It is our prayer that SCPIE will find favor with you, the reviewer, based on the concise, logical flow of the program we propose and its merit. It is the desire of our heart to provide abstinence training to South Carolina adults in South Carolina communities where there is the greatest need.

South Carolina has the 13th highest birth rate in the country among 15 to 19 year-olds - 53.6 births for every 1,000 young women those ages. Recent data shows 87 % of the counties in South Carolina have teen birth rates higher than the national rate. (SC Campaign to Prevent Teen Pregnancy, 2010)

While South Carolina's ranking for teen births is one of the highest in the nation, the racial disparity for African American teen mothers is far more disturbing. The rate of teen pregnancy for South Carolina's African American teens is nearly double that of White teens. This is why South Carolina Parents Involved in Education's Statewide Program to Prevent Teen Pregnancy will target those most at risk: African American teens.

SCPIE is honored to have the opportunity to partner with SCDHEC's Office Of Minority Health. As you will see, within the pages of our proposal, the opportunity to partner with the State's leading health agency will enable a seamless flow of services in every South Carolina county.

Thank you for your thoughtful consideration.


Sheri Few
President

When it comes to education, parents are the most important piece of the PIE!

EXHIBIT C

South Carolina
**Parents
Involved in
Education**
SC PIE



through a Partnership with

SCDHEC's Office of Minority Health

presents

A Statewide Program

To Prevent Teen Pregnancy

EXHIBIT D

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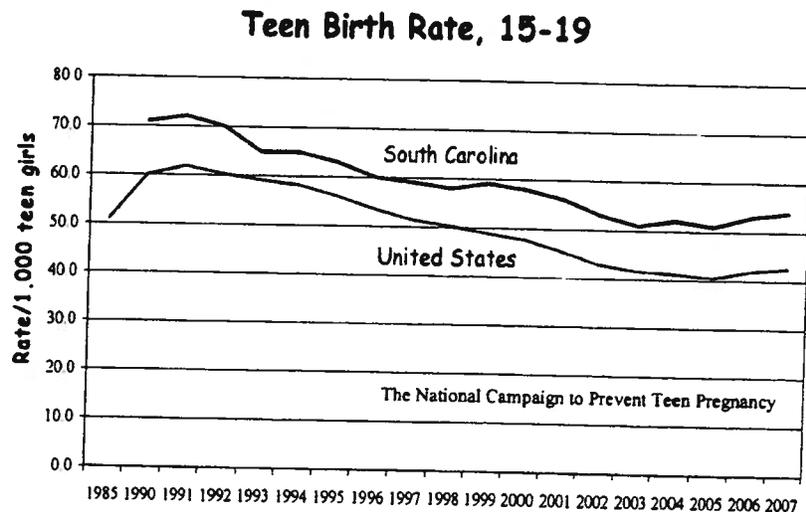
PROGRAM DESCRIPTION

A teenage girl, whom we will call "Pamela" lives with her mother and three siblings in a dilapidated house in northeastern South Carolina. Sometimes they have no electricity because a bill didn't get paid that month. Her father has been absent since...well, she never really ever knew him. Her mother works three jobs, leaving "Pamela" to get the groceries and make the meager breakfasts and dinners.

"Pamela" gets good grades and has an aptitude and "possibilities" beyond what even more privileged girls in her town might expect. She has her mother as an example of the problems facing a single mother, but craves the attention she gets from one of the boys at school.

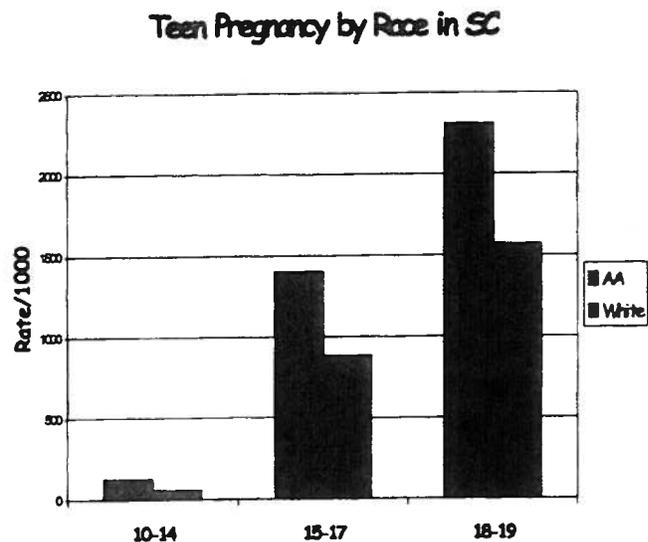
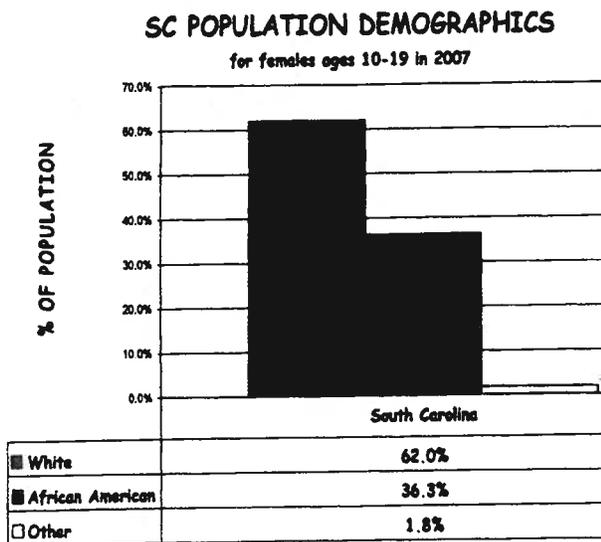
The health department nurse confirms what "Pamela" knew in her heart to be true. Before her senior year ends, she is going to graduate from single girl to single mom. The boyfriend promised nothing and has less to give, so he walks away. "Pamela's" future has just changed from promising to dismal. Chances are few that she will graduate, and fewer still that she will attend any school of higher learning.

Sadly, in South Carolina, out-of-wedlock pregnancies are destroying the potential for success for many teenagers. Teenage pregnancy rates among 15 to 19 year olds consistently remain well above the national average.



Targeting those Most at Risk: African American Teens

When the data is separated by race, teenage pregnancies are more prominent among African Americans. The South Carolina Campaign to Prevent Teen Pregnancy reports substantial racial gaps in the number of pregnant teens in South Carolina. The highest percentage of teen births (47%) is to black mothers although African Americans account for only one third of the population of this age group. The black teen birth rate (64 per 1,000) is almost twice as high as the white teen birth (38 per 1,000).



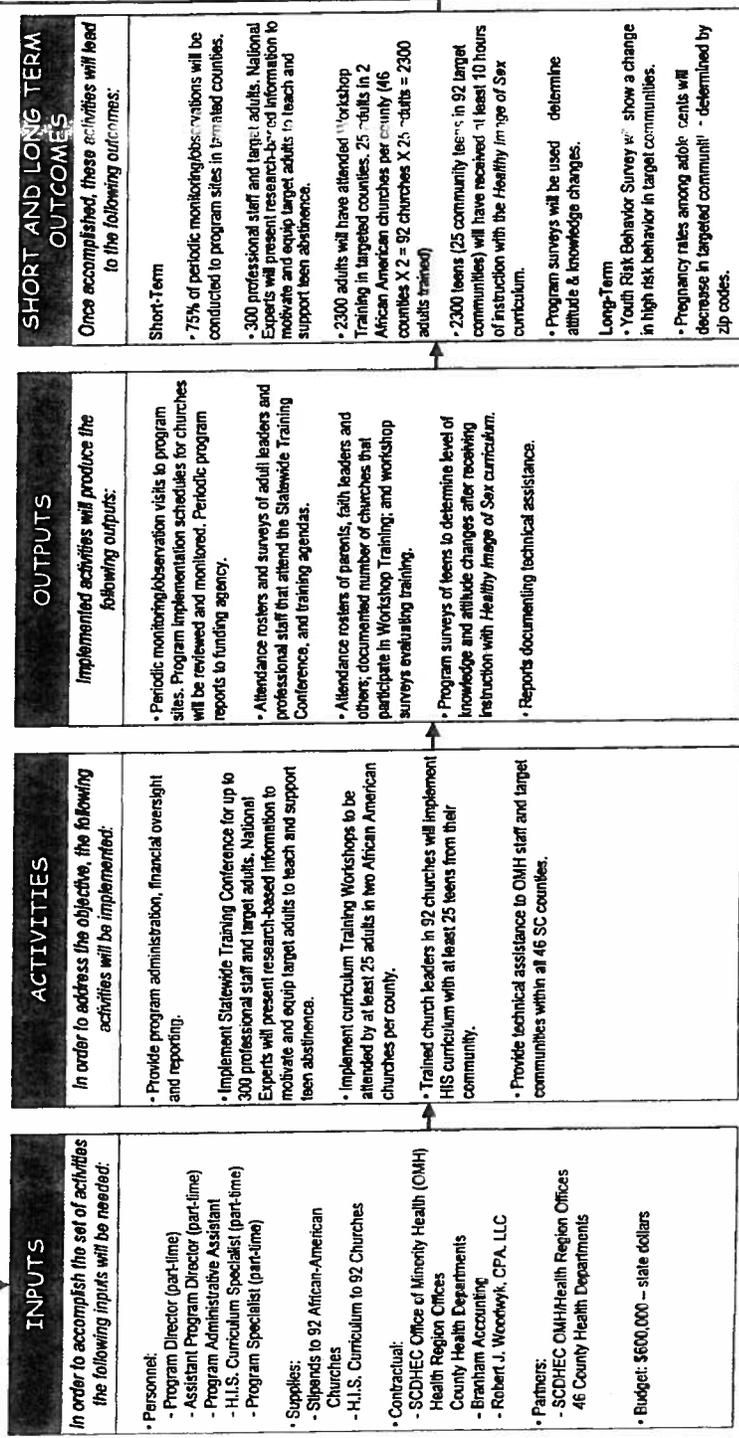
To address the high disparity of pregnancy for African American teenagers in South Carolina when compared to their White counterparts, the proposed program will target African American church leaders in every South Carolina county for specialized training to equip them to implement National Abstinence Clearinghouse approved curriculum designed to teach teens to abstain from sexual activity to avoid pregnancy.

SOUTH CAROLINA PARENTS INVOLVED IN EDUCATION LOGIC MODEL for STATEWIDE TEEN PREGNANCY PREVENTION

OBJECTIVES

With the noted inputs and activities, the following objective will be achieved:

To reduce the incidence of out-of-wedlock pregnancies among adolescents ages 13-19



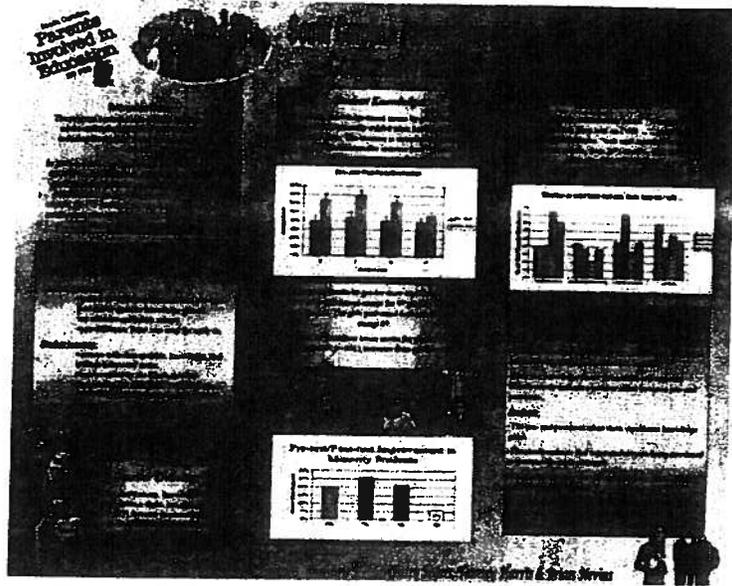
EXPERIENCE/QUALIFICATIONS

South Carolina Parents Involved in Education (SCPIE) is a nonprofit organization governed by a Board of Directors, benefiting from an Advisory Board of highly credentialed experts ranging from PhDs, MDs and lawyers. SCPIE is committed to excellence in the public schools of South Carolina through the meaningful involvement of parents in their children's education. A primary goal is advancing abstinence education in public schools and communities.

In January 2005, The Institute for Youth Development (IYD) awarded SCPIE a one-year grant to enhance its ability to promote risk avoidance strategies for HIV/AIDS. The purpose of the capacity building grant was to provide SCPIE increased skills to implement a federal program related to abstinence education. Project capacity building activities included training for the SCPIE President, who became certified in Grant Writing and Grants Administration.

In October 2005, South Carolina Parents Involved in Education received its first opportunity to provide the unprecedented teacher training model for abstinence education through a grant award from the South Carolina Department of Health and Environmental Control (SCDHEC). This afforded SCPIE the opportunity to partner with Marlboro County School District to train teachers, parents and community members to lead adolescents to abstain from sexual activity. Evaluation results of this project demonstrate an improvement in post-survey responses to various attitude and behavior questions. In addition, teen pregnancy rates in Marlboro County have had a sharp and steady decline since the program's inception. One measure of improvement that shows sustainability is how many teenagers have engaged in sexual intercourse. In the first year of implementation, 34% of 8th graders and 55% of 9th graders had sexual intercourse, and in year two, only 37% of 9th graders have had sexual intercourse. This means that those 8th graders that had not had sex are still remaining virgins the following year – an 18% improvement in

abstainers in just one year of intervention. Results of the project were deemed so significant on the national level that SCPIE was awarded the opportunity to present its success in poster format for the 2007 Abstinence Evaluation Conference in Baltimore, MD.



It is also noteworthy to recognize that Marlboro County was defined by SCDHEC as a "Priority Two County", scoring above the SC average rate in 4 of 5 variables in 2005 and in 2007 (the next time similar ratings were calculated), Marlboro County had moved into the "Priority Three County" category. This is a marked improvement for just a short period of intervention, with limited funding.

In 2006, SCPIE was awarded a federal grant to expand its project into five additional school districts. Teachers from these districts and Marlboro County were trained through week-long summer conferences in 2006, 2007 and 2008. Knowledge scores, as measured by pre- and post-surveys increased significantly. More importantly, the attitude of the teachers toward teaching abstinence shifted. When asked, "I think that high school sex education programs should teach:" the response "No sex until marriage." increased from 77.5% to 97.8%.

SCPIE has the experience and ability to implement successful abstinence programs. From 2005-2008, with an average of five full-time employees and nearly an \$800,000 annual budget,

REFERENCES ATTESTING THE EFFICIENCY OF SCPIE'S NAC PROGRAM

In the last five years, SCPIE has provided National Abstinence Clearinghouse-approved services to over 100 organizations. The contact information and dates of service for five of these organizations are listed below for references.

Letters attesting to the efficiency of SCPIE's NAC Program from these five references can be found in the appendix (pages 22-26).

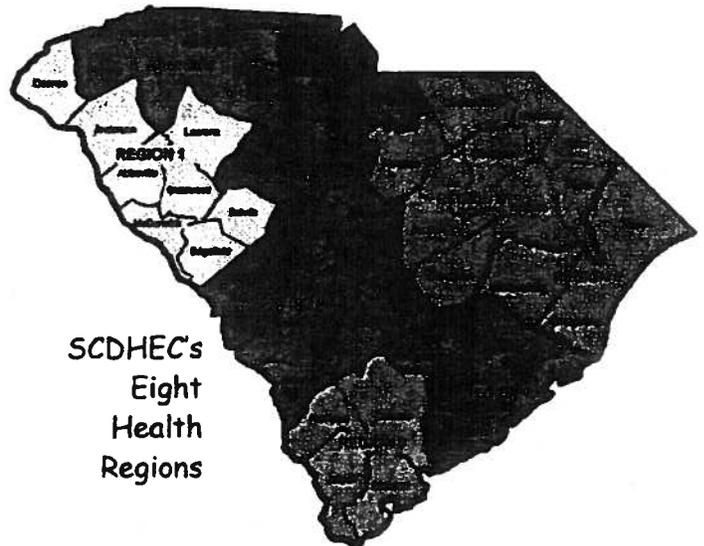
- 1. South Carolina Department of Health and Environmental Control (SCDHEC)**
L. Owens Goff, Jr., Assistant Bureau Director & State Abstinence Education Coordinator
(803)-545-4483
GOFFLO@dhec.sc.gov
Dates of Service: 09/01/04-06/30/2009
- 2. Florence Public School District One**
James B. Shaw III, Health and PE Coordinator
(843)-669-4141
JShaw@fsd1.org
Dates of Service: 09/01/2005-06/30/2009
- 3. Dillon School District Two**
Lynn Liebenrood, Director of Instruction
(843)-841-6966
liebenrood@dillon2.k12.sc.us
Dates of Service: 09/01/2005-06/30/2009
- 4. SCDHEC Health Region Four**
Jo Ann Price, Director of Nursing and PH Services
(843) 661-4830
PRICEJ@dhec.sc.gov
Dates of Service: April 2006
- 5. King of Kings Church of God**
Rev. Clyde Odom
(843)-206-6738
cmpodom@att.net
Dates of Service: March 2008

NUMBER OF COUNTIES SERVED

The South Carolina Parents Involved in Education (SCPIE) Teen Pregnancy Prevention Program will serve all forty-six counties of South Carolina. SCPIE will train adults who influence teens throughout the state. Through a partnership with SCDHEC's Office of Minority Health, adults in at least two African American churches in every South Carolina county will be trained and church lay leaders will then teach adolescents in their community to abstain from sexual activity to avoid pregnancy.

SCDHEC HEALTH REGIONS							
REGION 1	REGION 2	REGION 3	REGION 4	REGION 5	REGION 6	REGION 7	REGION 8
OCONEE	PICKENS	YORK	KERSHAW	AIKEN	WILLIAMSBURG	BERKLEY	HAMPTON
ANDERSON	GREENVILLE	CHESTER	CHESTERFIELD	CALHOUN	HORRY	DORCHESTER	CALHOUN
ABBEVILLE	SPARTANBURG	LANCASTER	SUMTER	BARNWELL	GEORGETOWN	CHARLESTON	JASPER
LAURENS	CHEROKEE	FAIRFIELD	LEE	ORANGEBURG			BEAUFORT
GREENWOOD	UNION	NEWBERRY	DARLINGTON	ALLENDALE			
MCCORMICK		LEXINGTON	MARLBORO	BAMBERG			
SALUDA		RICHLAND	CLARENDON				
EDGEFIELD			FLORENCE				
			DILLON				
			MARION				

Commitment letters from SCDHEC Health Region Directors document the ability of SCPIE to access populations in every South Carolina county. Each Health Region Director letter lists the counties in their region and records the commitment to provide services in each of these counties. The counties have been highlighted in each commitment letter found in the appendix.



SCDHEC's
Eight
Health
Regions

When combined, the eight SCDHEC Health Regions cover all forty-six counties of our state.

EXHIBIT E

South Carolina
**Parents
Involved in
Education**
SC PIE

PO Box 819
698 Gibson Drive
Lugoff, SC 29078
tel: 803.438.5144
tel: 803.438.1357
www.scpia.org

October 4, 2010

Review Committee
SC Department of Social Services
Teen Pregnancy Prevention Program - Abstinence

Dear Reviewer:

Thank you for the opportunity to present this proposal. It is our prayer that SCPIE will find favor with you, the reviewer, based on the concise, logical flow of the program we propose and its merit. It is the desire of our heart to provide abstinence training to South Carolina adults in South Carolina communities where there is the greatest need.

South Carolina has the 13th highest birth rate in the country among 15 to 19 year-olds - 53.6 births for every 1,000 young women those ages. Recent data shows 87 % of the counties in South Carolina have teen birth rates higher than the national rate. (SC Campaign to Prevent Teen Pregnancy, 2010)

While South Carolina's ranking for teen births is one of the highest in the nation, the racial disparity for African American teen mothers is far more disturbing. The rate of teen pregnancy for South Carolina's African American teens is nearly double that of White teens. This is why South Carolina Parents Involved in Education's Statewide Program to Prevent Teen Pregnancy will target those most at risk: African American teens.

SCPIE is honored to have the opportunity to partner with SCDHEC's Office Of Minority Health. As you will see, within the pages of our proposal, the opportunity to partner with the State's leading health agency will enable a seamless flow of services in every South Carolina county.

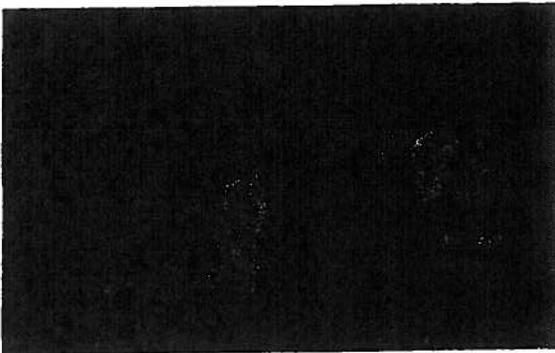
Thank you for your thoughtful consideration.


Sheri Few
President

When it comes to education, parents are the most important piece of the PIE!

activity because they will have more confidence in the teenager's ability to abstain and more faith in the overall efficacy of the abstinence approach for preventing teenage pregnancy.

South Carolina Parents Involved in Education (SCPIE) suggests instruction for teens alone is not enough to curb the tide of teen pregnancy. In order to see lasting results and sharp declines in teen pregnancy rates, we must first educate adults. Well-meaning adults, including parents, lack the knowledge that will equip them to be active in the struggle to improve teen pregnancy rates. SCPIE has been successful in creating a paradigm shift for adults connected with teens through its nationally renowned trainings. Please consider the following testimonies from a few of SCPIE's adult trainees.



I cannot believe how much I learned in just that short time. People just do not realize how important stressing Abstinence education is to our young people. We are losing them at an incredible rate and we need to do something about it now. We cannot afford to hide our heads in the sand or

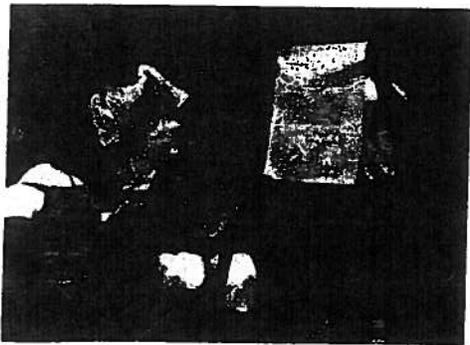
depend on others to take the lead in this. I am grateful for the information that was presented and plan to use the same format when I begin teaching this to my students. I also didn't realize the importance of presentation until I witnessed some great presentations myself. SC PIE did a fantastic job organizing, planning and selecting the presenters.

Dolores R. Conn,
Assistant Athletic Director
Dillon High School

I have been a teacher for more than 20 years. The staff and speakers of this conference revitalized me and gave me the fortitude and desire to continue in this important professional field. I was taught knowledge about the law, sociology, physiology, and psychology as it relates to adolescents and their behaviors. I was encouraged to continue the mission of reaching impressionable preteens and teens as it relates to their well being and guiding them to make healthy and wise decisions for their future. The speakers also challenged me to see the bigger picture of parents, faith and community leaders, and teachers all working together to make a difference in the lives of those that will come after us. I am grateful to the staff of SC PIE. I can't thank them enough for the efforts, drive, insight and determination to enable adults to see our children as a mission to protect and guide as they move toward adulthood.



Kathleen Docharty
Moore Intermediate School
Florence School District One



If according to Mark Twain, "You can't depend on your eyes when your imagination is out of focus," what can you depend on? Healthy Image of Sex realizes that because of the plurality of the society we live in today, people are "doing and [saying] what's right in their own eyes" and our youths are listening. So, we can't be silent! In fact, we must speak louder and clearer than all those other voices that are leading our children down destructive paths. Healthy Image of Sex is helping us do that.

Part of HIS Program Closing Remarks by Regina Peterson
New Life Assembly of God, Florence, SC

SOUTH CAROLINA PARENTS INVOLVED IN EDUCATION LOGIC MODEL for STATEWIDE TEEN PREGNANCY PREVENTION

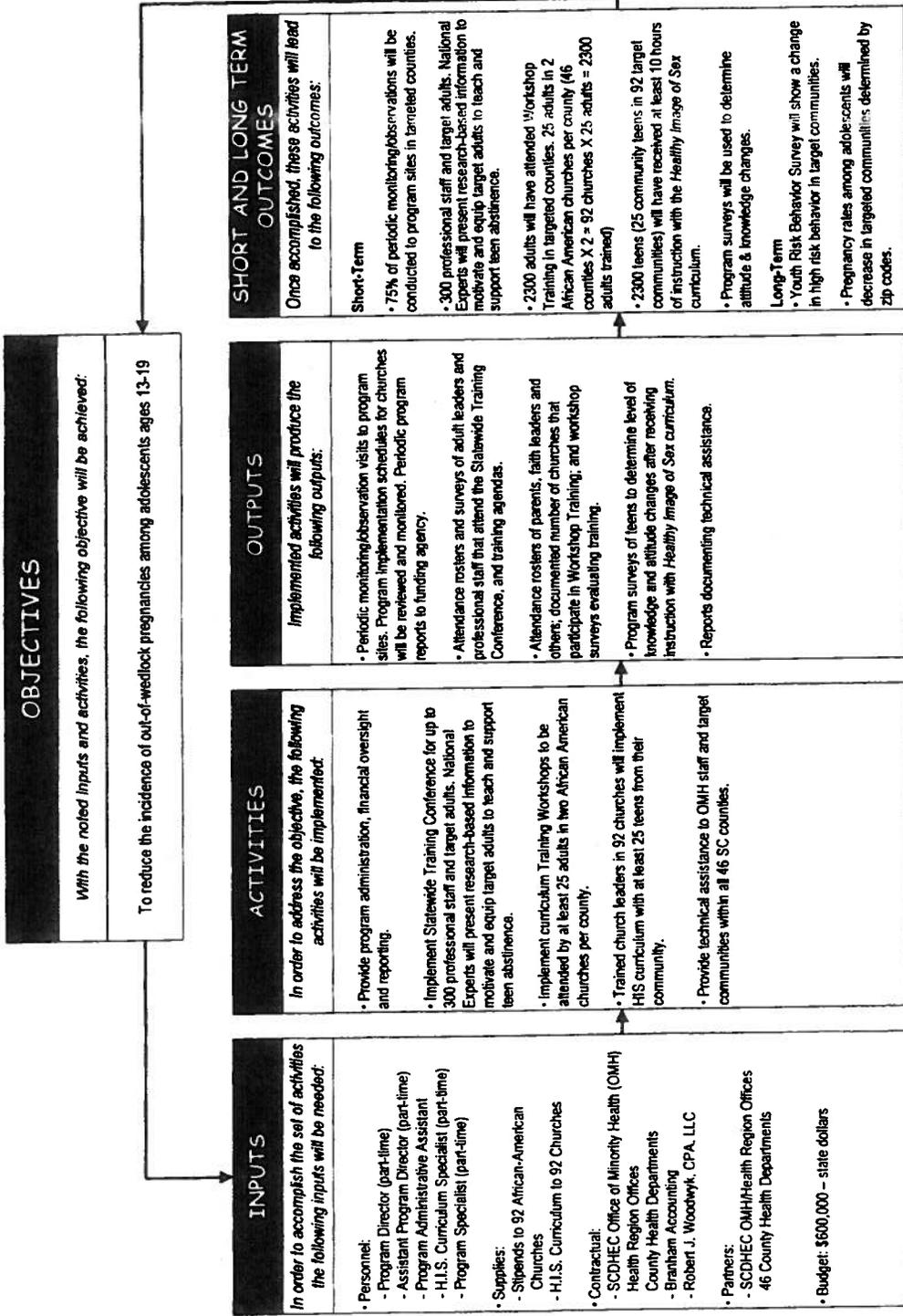


EXHIBIT F

Training Parents & Other Adults Connected with Teenagers

South Carolina Parents Involved in Education (SCPIE) understands that community and parental involvement is essential to effectively directing teens to abstain from sexual activity to avoid pregnancy. According to the nationally renowned Adolescent Health Study, which surveyed over 90,000 7th to 12th graders, parents and families whose adolescent children perceive they disapprove of their being sexually active provide protection from early sexual intercourse. (Blum et al., 1997) Furthermore, eighty-eight percent (88%) of teens say parental communication would help them to avoid sexual activity. (National Campaign to Prevent Teen Pregnancy, 2003) When more South Carolina parents and other adults understand the influence they have over teen sexual health they will be better prepared to direct teens toward an abstinent lifestyle, avoiding pregnancy.

SCPIE recognizes that many adults believe the “safe sex” message is the best we have to offer teens. With research-based training from national experts, target adults will understand the social, psychological, and health gains to be realized when teens avoid sexual activity. South Carolina Parents Involved in Education’s Statewide Program to Address Teen Pregnancy will influence teens to abstain from sexual activity by first educating and training the influential adults in their lives

Research also demonstrates that the most effective programs for reducing sexual risk-taking utilize instructors who believe in the approach and who have been trained. (Kirby, 2001). SCPIE’s training will empower adults to understand that teenagers want adults in their lives to believe that they are capable of avoiding sexual activity and to provide them with skills that will help them to accomplish this goal. Science and research presented by national experts in SCPIE trainings will empower trainees to be more effective in directing youth toward avoiding sexual

Partnering with SCDHEC's Office of Minority Health

South Carolina Parents Involved in Education (SCPIE) is excited to have a new partnership with the State's leading health agency. South Carolina Department of Health and Environmental Control's Office of Minority Health (OMH) is well-established in the African American faith community. This will provide easy access in every county for the proposed Statewide Program to reach African American teenagers and the adults that influence their sexual health decisions. OMH will work through SCDHEC's eight Health Regions and the forty-six Health Departments under their purview to provide services to two African American churches in every county.

The church is the nucleus of African American communities in South Carolina. This is why services for the African American population will be delivered through the faith community. Strategically chosen for their experience and existing relationships with African American churches in every South Carolina county, OMH will subcontract to provide services through county health agencies throughout the state. SCPIE will provide training for OMH staff who will implement training workshops for African American parents, faith leaders and other influential adults in every county. These trained adults will implement the National Abstinence Clearinghouse approved curriculum, Healthy Image of Sex (HIS) for youth in their churches and community. The proven successful HIS curriculum is culturally sensitive and was designed specifically for the African American faith community. Churches will be provided stipends to offset the costs of facilities, volunteer time and other resources necessary to implement the Healthy Image of Sex abstinence curriculum.

SCDHEC's Office of Minority Health (OMH) has worked with African American churches to implement community and faith-based approaches to improving health outcomes for over 20 years. With a focus on eliminating racial and ethnic health disparities, OMH is the ideal partner

for a Statewide Teen Pregnancy Prevention Program that will target those most at risk for teen pregnancy in South Carolina: African Americans youth.

SCPIE will employ local author of Healthy Image of Sex abstinence education curriculum, Pamela Jones, to provide curriculum training for OMH staff and churches. Miss Jones will train OMH staff and provide ongoing training and technical assistance to churches. Miss Jones will oversee fidelity to the program and assist in gathering data for reporting requirements to the South Carolina Department of Social Services.



Pamela Jones

Statewide Training and Implementation Plan

Following the hiring of staff and orientation meetings, SCPIE will begin planning the Statewide Training Conference, which will accommodate up to 300 attendees in January 2011. SCPIE has extensive experience in successfully implementing abstinence education training conferences of this scope and size for adults connected with teens. SCPIE's successful adult training model will be replicated for this Statewide Program to Prevent Teen Pregnancy. National experts will present research-based evidence for abstinence and will equip and motivate trainees to teach South Carolina teens to abstain from sexual activity to avoid pregnancy.

While SCPIE staff plan the training conference agenda, secure speakers and handle other technical details of the statewide conference, the Office of Minority Health (OMH) will begin identifying two African American churches from each South Carolina county for providing services. OMH will prepare lay leaders of target churches to attend the January Statewide Training Conference and initiate planning of subsequent local workshops in their communities.

In February 2011, local Healthy Image of Sex curriculum author, Pamela Jones, and abstinence expert and Program Specialist, Marney Wooldridge will assist OMH staff with

providing local abstinence training workshops for lay leaders, parents and other adults connected to teens in the 96 target communities. Following local workshops, OMH staff will oversee the implementation of the HIS curriculum for at least 25 teens in each of the 92 trained communities.

Cost Effectiveness and Sustainability

Two African American churches in each county (92 churches statewide) will participate in comprehensive training prior to implementing the NAC approved HIS curriculum. At least 25 adults from each church community (2300 total adults) will attend Training Workshops. Each participating church will instruct at least 25 youth with 10 lessons of HIS abstinence education (2300 total teens). The cost of services for this program is just under \$140 per recipient. However, because the curriculum will remain in the hands of the trained churches, the program is somewhat self sustaining and can be replicated in the same churches with new teens each year. If future funding is awarded, SCPIE will expand the program to new churches in every county until Africa American churches throughout South Carolina have been saturated with abstinence education resources and training to prevent teen pregnancy.

NAC Approved Curriculum

A letter from SCDHEC attesting to SCPIE's successful use of the National Abstinence Clearinghouse (NAC) approved curriculum for at least five years prior to this application can be found on page 14.

In 2008, HIS took part in a critical review through the US Department of Health and Human Services (USDHHS). Revisions were made to provide for complete medical accuracy. HIS is approved by the National Abstinence Clearinghouse, the USDHHS and SCDHEC. In order to verify the NAC approved status of the HIS curriculum, SCPIE has obtained the following letter from National Abstinence Clearinghouse.

SOUTH CAROLINA PARENTS INVOLVED IN EDUCATION LOGIC MODEL FOR STATEWIDE TEEN PREGNANCY PREVENTION

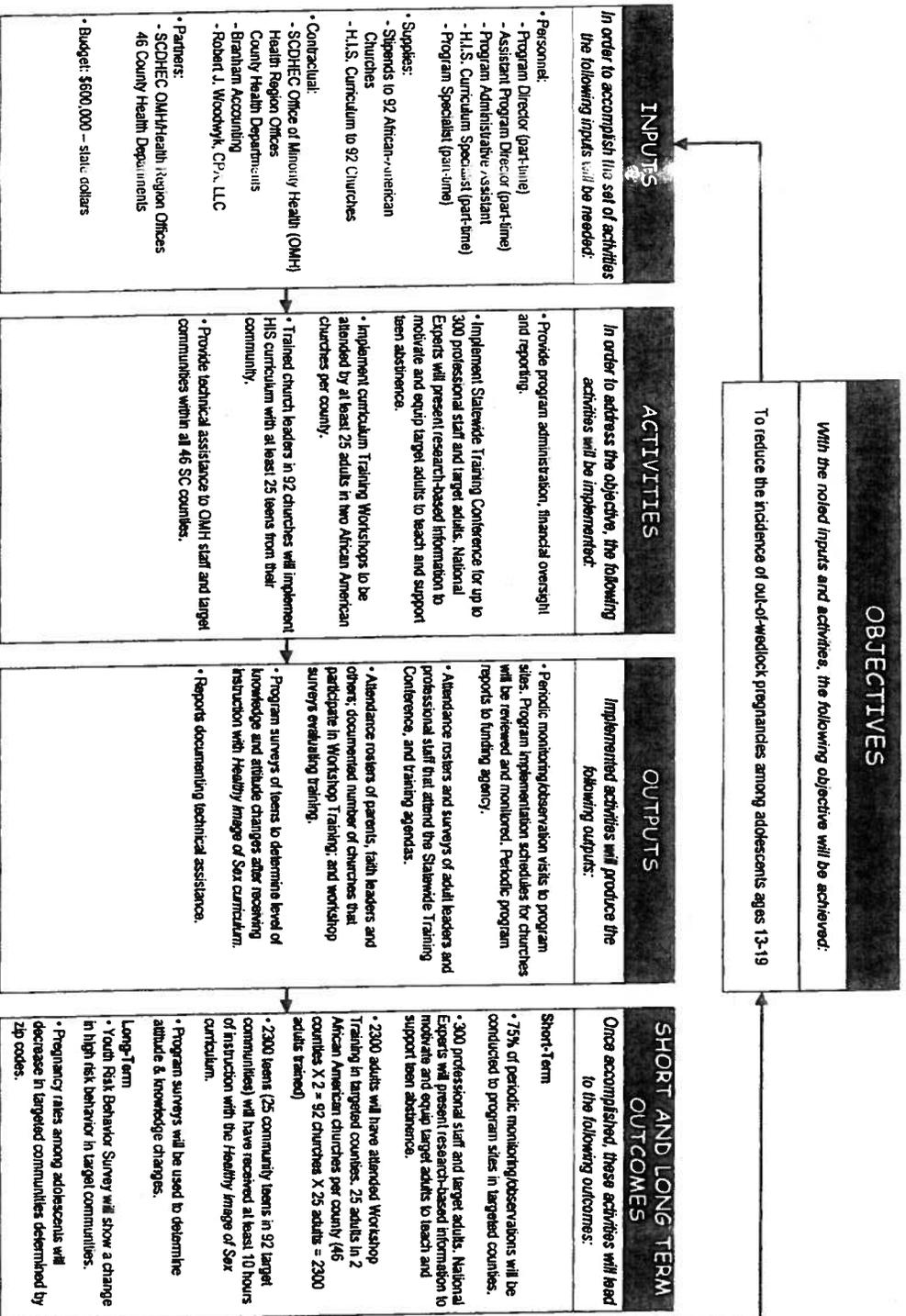


EXHIBIT G



PO Box 619
888 Gullon Drive
Lynch, SC 29378
c: 803 438 5144
c: 803 438 1057
www.scpie.org

October 4, 2010

Review Committee
SC Department of Social Services
Teen Pregnancy Prevention Program - Abstinence

Dear Reviewer:

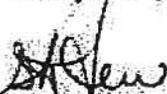
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Thank you for your thoughtful consideration.


Sheri Few
President

When it comes to education, parents are the most important piece of the PIE!

EXHIBIT H

South Carolina
**Parents
Involved in
Education**
SC PIE



through a Partnership with

SCDHEC's Office of Minority Health

presents

A Statewide Program

To Prevent Teen Pregnancy

Subcontractor Identification and Qualifications

SCDHEC Office of Minority Health will subcontract with SCPIE to oversee implementation of NAC approved Healthy Image of Sex abstinence education curriculum in two African American churches in every county of the state. They will also assist SCPIE in implementing a statewide training for parents, teachers, social and health professionals and the faith community. Their contract will be in the amount of \$250,000.

Business Name: SC Department of Health and Environmental Control

Address: 2600 Bull Street, Columbia, SC 29210

Phone: Mary Fuhrman, Director of Financial Management 803-898-3380

Taxpayer ID # 576000286

Point of Contact: Shauna P. Hicks, Director Office of Minority Health (803) 898-0868

Most Current Financial Statement: The statements can be found on the State Auditors website <http://www.osa.state.sc.us/statereports/stateofsc/swsa/>

Financial Statements for Last Two Fiscal Years: The statements can be found on the State Auditors website <http://www.osa.state.sc.us/statereports/stateofsc/swsa/>

Information Reflecting Current Financial Position: The information can be found on the State Auditors website <http://www.osa.state.sc.us/statereports/stateofsc/swsa/>

BOARD:
Paul C. Angbury, III
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kinnair
Secretary



C. East Hester, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Sartin
M. David Mitchell, MD
Glenn A. McCall
Colman F. Buckhannon, MD

September 29, 2010

Shari Few
SC Parents Involved in Education
PO Box 819
Lugoff, SC 29078

Dear Ms. Few:

The South Carolina Department of Health and Environmental Control (DHEC) Office of Minority Health (OMH) is pleased to support and partner with the South Carolina Parent Involved in Education's application for the Statewide Program to Prevent Teen Pregnancy. As you are aware, DHEC is the state public health entity, with offices in all 46 counties. The mission of the agency is to promote and protect the health of the public and the environment. In doing so, we strive to improve the quality and a year of healthy life for all through promoting healthy behaviors, which includes a focus on risk reduction and health promotion statewide.

The Office of Minority Health, established in 1990, provides leadership and serves as the principle advisor to the Health Department as well as to other agencies and organizations on public health and environmental issues affecting minority populations. We focus on 1) eliminating racial and ethnic health disparities; 2) building capacity of both public and private entities to develop, implement, monitor and evaluate high quality cultural competent policies, resources and program development; and 3) engage and empower affected communities to support individual and community-based efforts.

OMH understands the vital role that the church plays in the African American community. For the past 20 years, we have worked with the churches to implement community and faith-based approaches to improving health outcomes. Select examples of our faith-based partnership efforts include:

- Real Men Check' It Out - a community driven culturally appropriate education and communication prototype that addresses prostate cancer in the African American community using the African American church as one of the venues;
- faith and health partnership with the Seventh Episcopal District of the African Methodist Episcopal Church in the development of a two strategic health plans under the past and current Bishop; and
- the development/enhancement of health ministries in minority faith-based organization through the implementation of our Statewide Faith-Based Partnership grant;
- the establishment of an intra-agency Faith and Health Work Group, with representatives from all 8 local public health regions, to plan for and coordinate faith-based activities statewide; and
- the "Protect Your Body... Your Temple" faith-based church bulletin insert health education/health promotion campaign.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2700 Hall Street • Columbia, SC 29201 • Phone: (803) 898-5432 • www.scdhec.gov

As a partner, OMH staff will identify at least two churches in each county statewide and provide training to church leadership, youth leaders and others to promote abstinence among African American youth. We will actively engage support from the members of the intra-agency Faith and Health Work Group to assist with identifying African American churches that are most ready to proceed and, we will work across the state with our existing network of African American churches that have existing health ministries and have identified themselves as interested.

We are in support of this application and pleased to partner with you in this effort.

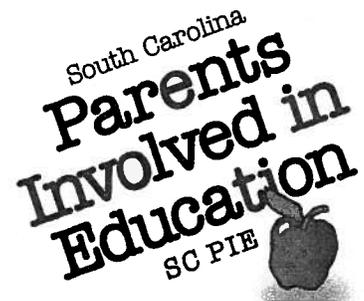
Sincerely,



Shanna P. Hicks, MHS, CHES
Director, Office of Minority Health

December 17, 2010

R. Voight Shealy
Chief Procurement Officer for Goods and Services
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201



998 Guion Dr, Lugoff, SC 29078
803-438-5144 info@scpie.org

RE: **Motion to Dismiss**
Protest of Notice of Intent to Award Teen Pregnancy Services – Abstinence
Contract No. 4400003133
Solicitation No. 5400002251

Dear Mr. Shealy,

Following review of the Protest made on behalf of Heritage Community Services (Heritage) for the above-referenced Intent to Award, I am compelled to request that you consider a Motion to Dismiss the protest for the following reasons.

- South Carolina Parents Involved in Education (SCPIE), through a competitive bid process, successfully outscored the other Offeror/Protestant; and
- the Protestant's claims are not substantiated by real evidence to support the grounds of said protest; and
- the proviso-enacted solicitation limits time to provide services (by June 30, 2011) and therefore warrants the avoidance of an unnecessary hearing in this matter; and
- the grounds for protest are about form and not substance; and
- the Protestant does not allege violations of the procurement code but suggests minor informalities which may be waived at the sole discretion of the Procurement Officer. [R.19-445.2020 and Section 11-35-1520(13)]

Below, SCPIE responds to the Heritage grounds for protest.

1. The SCPIE proposal contains more reference letters than the RFP instructions allow.

RESPONSE – Heritage alleges SCPIE's eight commitment letters from its subcontractor, SCDHEC, are reference letters. SCPIE, in order to validate its claim to provide services to every South Carolina county, included eight commitment letters, in the appendix, from each SCDHEC Health Region Director. These letters commit the subcontractor to providing services in every county. A valid proposal should include commitment letters to prove the Offeror can provide what the proposal describes. The eight commitment letters are not reference letters.

2. The SCPIE proposal does not comply with the format requirements of the RFP.

RESPONSE – Heritage alleges SCPIE’s use of charts, tables and graphics allowed an unfair advantage of more space to provide information. To the contrary, the SCPIE proposal was well under the thirty-page limit with ten pages to spare. The alleged “conscious disregard” for format requirements to provide more space for information is unfounded. SCPIE has won millions of dollars in State and Federal competitive bids that included the standard proposal requirements of double-spaced, 12-point Times New Roman Font, with one-inch margins on all sides and has never been deemed nonresponsive for utilizing charts, tables, graphs, pictures, cover letters and title pages. In addition, I, as SCPIE President and author of the high-scoring proposal, have been formally trained and certified in Grant Writing by Research Associates, the nation’s only organization that certifies Grant Writing. Research Associates teaches the common and acceptable practice of charts, tables, and graphs that are not limited by formatting requirements.

3. SCPIE’s letter to the Review Committee constitutes an improper communication in violation of the RFP instructions.

RESPONSE – It is common practice to introduce a proposal through a cover letter. In addition, it is my understanding that the communication prohibition was not intended for the proposal.

4. The SCPIE proposal includes comment over and above the specific information requested, but it was not included in the Appendix as required.

RESPONSE – SCPIE’s proposal was intentionally concise and included only the information required for proper evaluation of the proposal.

5. The proposal is actually a joint bid with DHEC and should be disallowed.

RESPONSE – SCDHEC is a subcontractor in the SCPIE proposal. It is not a joint-bid. SCPIE signed the offer and when the award is final, payments will be made to SCPIE and SCPIE will pay the SCDHEC subcontractor. Page 35 of the SCPIE Proposal lists the Subcontractor Identification and Qualifications (Ex. A), as required by the RFP.

Thank you for your timely and favorable ruling for a Motion to Dismiss the Heritage Protest of the Intent to Award Contract No. 4400003133.

Sincerely,



Sheri Few
President

Cc: Anne Badgley, Heritage Community Services
Karl S. Bowers, Jr., Hall & Bowers, LLC
William Bray Jr., SCDSS
John Stevens, MMO
Chris Manos, MMO

Subcontractor Identification and Qualifications

SCDHEC Office of Minority Health will subcontract with SCPIE to oversee implementation of NAC approved Healthy Image of Sex abstinence education curriculum in two African American churches in every county of the state. They will also assist SCPIE in implementing a statewide training for parents, teachers, social and health professionals and the faith community. Their contract will be in the amount of \$250,000.

Business Name: SC Department of Health and Environmental Control

Address: 2600 Bull Street, Columbia, SC 29210

Phone: Mary Fuhman, Director of Financial Management 803-898-3380

Taxpayer ID # 576000286

Point of Contact: Shauna P. Hicks, Director Office of Minority Health (803) 898-0868

Most Current Financial Statement: The statements can be found on the State

Auditors website <http://www.osa.state.sc.us/statereports/stateofsc/swsa/>

Financial Statements for Last Two Fiscal Years: The statements can be found on

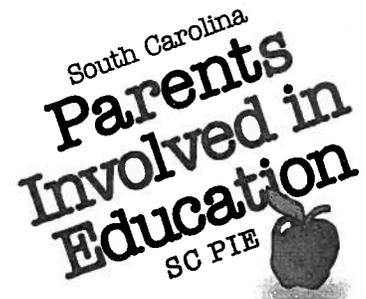
the State Auditors website <http://www.osa.state.sc.us/statereports/stateofsc/swsa/>

Information Reflecting Current Financial Position: The information can be found on

the State Auditors website <http://www.osa.state.sc.us/statereports/stateofsc/swsa/>

December 17, 2010

R. Voight Shealy
Chief Procurement Officer for Goods and Services
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201



998 Guion Dr, Lugoff, SC 29078
803-438-5144 info@scpie.org

RE: Intent to Award Contract No. 4400003133
Teen Pregnancy Prevention Services – Abstinence

Dear Mr. Shealy,

I am writing to preface my Motion to Dismiss with a special plea warranted by the unique circumstances of the aforementioned contract for services.

Services under this contract are directed through SC Department of Social Services (DSS) by the SC Legislature for fiscal year 2010/2011. \$546,972.00 will be awarded to provide services before June 30, 2011. The RFP was posted on 9/14/2010 with an award posting date of 10/15/2010. Following five extensions, the Intent to Award to South Carolina Parents Involved in Education was posted on 12/2/2010. This was followed by a protest on 12/13/2010.

The protest could potentially exhaust another 6-8 weeks of service delivery time for this contract. This would put the provider in a highly disadvantaged position to deliver services in a very limited four-month period of time.

There are several customers affected by the delays: the State Legislature, DSS (Authoring Agency), SCDHEC (Subcontractor), citizens in need of services and the taxpayers of South Carolina. I strongly encourage you to inquire of the Authoring Agency as to the need to expedite the award in order to allow service delivery to begin as soon as possible.

I understand and respect Heritage's right to due process. However, after you have carefully evaluated the protest and SCPIE's Motion to Dismiss, I pray you will consider the special circumstances of this contract. Ruling favorably for SCPIE's Motion to Dismiss, as soon as possible, will eliminate the time it will take to schedule and facilitate a hearing and move the award process forward so that service delivery time will not be further interrupted.

Thank you for your consideration in this time-sensitive matter.

Sincerely,

Sheri Few
President

HALL BOWERS

HALL & BOWERS, LLC
ATTORNEYS AT LAW

December 22, 2010

Via Electronic Mail

R. Voight Shealy
Chief Procurement Office for Goods and Services
Materials Management Office
1201 Main St., Suite 600
Columbia, SC 29201

RE: Protest of Notice of Intent to Award Teen Pregnancy Services—Abstinence
Contract No. 4400003133
Solicitation No. 5400002251
Our File No. 11303/01500

Dear Mr. Shealy:

We write in response to the “Motion to Dismiss” recently filed by Ms. Few in connection with the above-referenced protest. Such a motion is not contemplated by the South Carolina Consolidated Procurement Code and, therefore, should not be considered by your office when resolving this protest. However, a handful of misstatements contained in Ms. Few’s letter warrant a brief response.

Ms. Few’s letter characterizes Heritage’s protest as being more concerned “about form and not substance,” and that all of Heritage’s arguments deal only with “minor informalities” that can be waived. This is not so. As you are aware, deviations from an RFP’s instructions and guidelines cannot simply be set aside, as bids must be evaluated against the criteria stated in an RFP. *See* S.C. Code Ann. § 11-35-310(28) (“The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP.”); *id.* § 11-35-1520(6) (“Criteria must not be used in bid evaluation that are not in the invitation for bids.”). The State Supreme Court has been particularly clear on this point, as it has held that a procurement officer cannot ignore defects in a bid that have the “‘capacity’ to affect the competitive bidding process.” *Ray Bell Constr. Co. v. School Dist. of Greenville County*, 331 S.C. 19, 32, 501 S.E.2d 725, 733 (1998).

The potential for SCPIE’s defective submission to prejudice the bidding process is clear. As explained throughout our December 13th letter, it contains more reference letters than permitted by the RFP. Despite Ms. Few’s attempt to masquerade the overage as mere “commitment letters,” each specifically states that the author is “pleased to support South Carolina Parents Involved in Education’s efforts to prevent teen pregnancy through abstinence education and training across the state.” SCPIE’s submission also materially deviated from the formatting guidelines in order to fit more information within the proposal than the group otherwise could have included had it stayed in-bounds of the RFP’s restrictions. In short, by ignoring the RFP’s rules and twisting nomenclature associated with its bid, SCPIE prejudiced the bidding process in a manner that cannot simply be disregarded.

1329 Blanding Street | Columbia, SC 29201
P.O. Box 12107 | Columbia, SC 29211

803.454.6504 tel
803.454.6509 fax
hallbowers.com

KEVIN A. HALL
kevin.hall@hallbowers.com
KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com
M. TODD CARROLL
todd.carroll@hallbowers.com

In addition to these formatting issues, SCPIE's bid should be deemed nonresponsive due to its "partnership" with another state agency. The proviso that authorized this contract stated that it must be awarded to a "private entit[y] to provide teen pregnancy prevention programs and services within the State." 2010-2011 General Appropriations Bill, Pt. IB, Proviso 26.22 (emphasis added). Through this proviso, the General Assembly expressly stated that it wanted a "private entity" to administer abstinence education in South Carolina, yet SCPIE proposes to turn this responsibility right back over to government after taking a cut of the contract's proceeds.

As explained on pages 11 through 13 of SCPIE's bid, SCPIE intends to do little more than provide "training" for DHEC staff. The agency's staff will then work with their regional counterparts, who will then work with county health departments to train "influential adults" on the curriculum. The primary role that government would play under SCPIE's bid is confirmed by a sentence common to each of the so-called "commitment letters":

We fully support the DHEC Office of Minority Health (OMH) serving as the entity responsible for overseeing the implementation of *Healthy Image of Sex* curriculum through trained lay leaders in at least 2 target churches in each county [within the Region].

In short, SCPIE's bid introduces three layers of government involvement in the curriculum's implementation. But the General Assembly expressly directed that this contract was to be awarded to and administered by a "private entity." SCPIE's proposal to pass all of the contract's responsibility and nearly half of its proceeds through to a state agency clearly violates the legislature's directive. SCPIE's bid is nonresponsive accordingly.

Nor is this violation a hypothetical concern. As explained in our December 13th letter, each of the three reviewers who graded SCPIE's bid above Heritage's did so in reliance on SCPIE's "partnership" with DHEC:

Reviewer Who Scored SCPIE above Heritage	Category in which Reviewer Noted SCPIE's "Partnership" with DHEC	Scores Reviewer Assigned to SCPIE and Heritage for that Category
3	<u>1. Program Description</u> : "Affiliated with SCDHEC allowing for a greatly increased resource pool"	SCPIE: 25 Heritage: 20
4	<u>1. Program Description</u> : "Efficiencies gained through DHEC partnership a plus"	SCPIE: 25 Heritage: 20
5	<u>4. Number of Counties in State Where Services Provided</u> : "Government (DHEC) partnership is commendable"	SCPIE: 19 Heritage: 18

R. Voight Shealy
December 22, 2010
Page 3

SCPIE's bid also raises constitutional concerns that cannot be simply overlooked as urged by Ms. Few's "motion." Because the proviso specifies that DSS must award this contract to a "private entity," allowing SCPIE to funnel nearly half of the proceeds to DHEC amounts to an unconstitutional re-appropriation of public monies by one state agency to another. *See State ex rel. Condon v. Hodges*, 349 S.C. 232, 247, 562 S.E.2d 623, 631 (2002) (finding that a transfer of funds appropriated to South Carolina's colleges back to the General Fund without any legislative authorization to do so amounted to a separation-of-powers violation). Additionally, Heritage is unaware of any authority that would allow a government entity to serve as a subcontractor to a private prime contractor. Indeed, such an arrangement is contrary to the constitutional prohibition on joint ventures between the State and private organizations. S.C. Const. art. X, § 11.

Contrary to Ms. Few's "motion," these critical, material defects cannot be cured simply by a waiver. Instead, SCPIE's bid is not responsive to the RFP or the legislative proviso that authorized the RFP. Accordingly, it should be rejected as a matter of law, and a Notice of Intent to Award this Contract should be issued in favor of Heritage Community Services. Additionally, Heritage respectfully requests a hearing with you on these issues.

Thank you again for your consideration of this protest. If we can provide you with any additional information or materials, please do not hesitate to call on us.

Yours very truly,



Karl S. Bowers, Jr.

cc: Sheri Few (via electronic mail)